

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL WELLMAN, #441682,

Petitioner,

v.

CASE NO. 2:09-CV-13678
HONORABLE PATRICK J. DUGGAN

LLOYD RAPELJE,

Respondent.

**OPINION AND ORDER GRANTING PETITIONER’S MOTION FOR NON-
PREJUDICIAL DISMISSAL AND DISMISSING WITHOUT PREJUDICE THE
HABEAS PETITION**

Michigan prisoner Michael Wellman (“Petitioner”) has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In 2008, Petitioner pleaded no contest to first-degree child abuse in the Circuit Court for Clinton County, Michigan, and was sentenced to 10 to 15 years imprisonment. In his pending petition, he raises claims concerning sex offender registration, the validity of his plea, the effectiveness of trial counsel, the legality of his arrest, the lack of medical evidence in the case, and his sentencing proceedings. Respondent has filed an answer to the petition contending that it should be denied. The matter presently is before the Court on Petitioner’s motion to voluntarily dismiss his petition so that he may return to the state courts and exhaust additional issues concerning the validity of his arrest and extradition warrants, the scoring of offense variables, the use of a pre-sentence report and victim impact statement at

sentencing, the victim's identification, the effectiveness of trial counsel, his eligibility for boot camp, and the application of the two-thirds rule at sentencing.

Petitioner previously moved to stay the proceedings and hold this case in abeyance in order to exhaust the above-listed additional issues. This Court denied Petitioner's request, finding that he had sufficient time with respect to the relevant statute of limitations to do so and return to federal court. The Court informed Petitioner that if he wished to have the court dismiss the present petition so that he may pursue additional issues in the state courts, he could move for a non-prejudicial dismissal. Given that Petitioner has now moved for a non-prejudicial dismissal so that he may exhaust additional issues in the state courts and that he has sufficient time within the one-year statute of limitations applicable to federal habeas actions to do so and return to the federal court, dismissal of the present petition is appropriate.

Should Petitioner wish to seek federal habeas relief following the exhaustion of state court remedies, he is reminded that he must file a new habeas petition in federal court within the time remaining on the one-year period of limitations set forth in 28 U.S.C. § 2244(d). The limitations period will be tolled during the time in which any properly filed post-conviction or collateral actions are pending in the state courts, *see* 28 U.S.C. § 2244(d)(2); however, Petitioner should be aware that the statute of limitations will continue to run during any time it takes him to file such motions in the state trial court and any time it takes him to file a new habeas petition once he has exhausted his state court remedies.

Accordingly,

IT IS ORDERED, that Petitioner's motion for non-prejudicial dismissal of his petition is **GRANTED**;

IT IS FURTHER ORDERED, that Petitioner's application for a writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE**.

Date: March 28, 2011

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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